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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RTID 0648-XT027

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 53.2 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category, to account for an accrued overharvest of 33.7 mt from previous time period subquotas. This action is intended to provide opportunities for General category fishermen to participate in the December General category fishery, which is scheduled to reopen on December 1, 2019, and is based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective *[insert date of filing for public inspection with the Office of the Federal Register]* through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Nicholas Velseboer, 978-281-9260, or Larry Redd, 301-427-8503.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The current baseline General and Reserve category quotas are 555.7 mt and 29.5 mt, respectively. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a “subquota” or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward from one time period to the next and is available for use in subsequent time periods. To date for 2019,

NMFS has taken seven actions that resulted in adjustments to the Reserve category, leaving 65.3 mt of quota currently available (84 FR 3724, February 13, 2019; 84 FR 6701, February 28, 2019; 84 FR 35340, July 23, 2019; 84 FR 47440, September 10, 2019; and 84 FR 48566, September 16, 2019; 84 FR 52806, October 3, 2019; and 84 FR 55507, October 17, 2019.)

For the January 2019 subquota period, NMFS transferred 19.5 mt of BFT quota from the December 2019 subquota period, and transferred 51 mt from the Reserve category, resulting in an adjusted subquota of 100 mt for the January 2019 period and a subquota of 9.4 mt for the December 2019 period (83 FR 67140, December 28, 2018, 83 FR 3724, February 13, 2019, and 84 FR 6701, February 28, 2019). NMFS closed the October through November General category fishery when the subquota (172.2 mt) was projected to be reached, effective October 13, 2019 (84 FR 55507, October 17, 2019). The 2019 General category fishery reopens December 1, 2019, and will remain open until December 31, 2019, or until the General category quota is reached, whichever comes first.

Transfer of 53.2 mt from the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the summer/fall and winter fisheries in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Preliminary landings data as of November 13, 2019, indicate that the General category has landed 791.1 mt this year, which exceeds the overall General category adjusted quota of 766.8 mt. For all commercial categories, however, approximately 17 percent (189.9 mt) of the total of the BFT category quotas remains available as of November 13, 2019 (*i.e.*, 978.1 mt of 1167.99 mt has been harvested), and NMFS anticipates that some amount of quota may remain unused by the end of the year even with the transfer. Absent a transfer, the December General category fishery would remain closed, even though quota remains available within the overall quota for the year and NMFS anticipates that commercial-sized BFT will be readily available on the fishing grounds when the fishery is otherwise scheduled to re-open December 1, 2019. Transferring 53.2 mt of BFT quota from the Reserve category would allow the General category fishery to resume as scheduled and would result in 28.9 mt being available to

the General category in December after accounting for 33.7 mt of accrued overharvest. It would also leave 12.1 mt in the Reserve category to account for any BFT mortalities associated with research and/or any overharvests that may occur in December.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. A portion of the transferred quota covers the 33.7 mt overharvest in the category to date, and NMFS anticipates that General category participants will be able to harvest the remaining 28.9 mt of transferred BFT quota by the end of the fishing year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2019 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2019 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that, even with this 53.2 mt transfer to the General category.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v)) and

(vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 51391, October 11, 2018), and with objectives of the 2006 Consolidated HMS FMP and amendments and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunity equitably across all time periods.

Based on the considerations above, NMFS is transferring 53.2 mt from the Reserve category to the General category. Therefore, NMFS adjusts the General category December 2019 subquota quota to 28.9 mt and adjusts the Reserve category quota to 12.1 mt. The General category fishery reopens December 1, 2019, and will remain open until December 31, 2019, or until the adjusted General category quota is reached, whichever comes first.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions.

Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing hmspermits.noaa.gov or by using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*e.g.*, quota adjustment or closure) is necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access hmspermits.noaa.gov, for updates on quota monitoring and inseason adjustments.

NMFS reminds General category participants that when the fishery reopens December 1, 2019, the BFT General category daily retention limit will be one large medium or giant BFT per vessel per day/trip.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional

variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2019 is impracticable and contrary to the public interest as such a delay would result in continued closure of the General category fishery (because the available quota has been exceeded) and the need to re-open the fishery later in the December time period, rather than the fishery automatically re-opening on December 1, 2019. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.27(a)(9) (Inseason adjustments) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 14, 2019.

Jennifer M. Wallace,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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